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IN THE
Supreme Court of the United States
OCTOBER TERM 1992

WILLIAM P. BARR, Attorney General of the United States,

Petitioner,

v.

CATHOLIC SOCIAL SERVICES, INC., et al.,

Respondents,

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

LEAGUE OF LATIN AMERICAN CITIZENS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE CITIES OF CHICAGO, LOS ANGELES AND NEW YORK AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

Chicago, Los Angeles, New York City and the District of Columbia submit this brief as amici curiae in support of respondents and respectfully request this Court to affirm the decision of the U.S. Court of Appeals for the Ninth Circuit. That Court correctly held that the district courts in the two consolidated cases (1) had jurisdiction under 28 U.S.C. § 1331(a) and 8 U.S.C. § 1329 to consider plaintiffs' challenges to Immigration and Naturalization Service ("INS") policies implementing the Immigration Reform and Control Act of 1986 ("IRCA"), Pub. L. No. 99-603, 100 Stat. 3359, and (2) properly afforded brief, remedial extensions of the application period for adjustment of status under IRCA ("legalization") to members of the plaintiff classes.

Class members are long-term-resident, undocumented aliens who were deterred from timely application by the challenged INS policies. These policies, which imposed certain travel restrictions that limited eligibility for legalization, were invalidated by the district courts, and INS has not defended them on appeal.

Of the approximately 300,000 aliens whose immigration status is at issue in these cases, approximately 18,000 reside in each of Chicago and New York City, 100,000 in Los Angeles and 3600 in Washington, D.C.[1] The legalization of these class members is an important concern of amici. Class members and the cities will benefit substantially if eligible undocumented aliens who would already have acquired lawful residency but for the concededly illegal policies are permitted to apply for legalized status. If class members do not obtain such relief, few will voluntarily leave the country or be deported. They will continue to require governmental services and will remain in an even more exploitative underground economy, due to the possibility under IRCA of sanctions for employment of undocumented aliens.

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[1] U.S. Department of Justice, Immigration and Naturalization Service, *Report on the Legalized Alien Population* (March 1992) ("INS Report") 19. The names and locations of class members are not known to respondents, due to confidentiality provisions, but it may reasonably be estimated that their geographical distribution follows that of the already-legalized population studied in the INS Report.

Legalized status would permit presently undocumented aliens to work "on the books," pay taxes and participate in civic processes. Legalized status would also permit now-undocumented aliens to avail themselves of the protection of laws and regulations designed to eliminate substandard labor and housing conditions, the existence of which diminishes the quality of life for all urban residents. Finally, the achievement of legalized status by class members would permit their cities to secure federal support for certain expenditures on their behalf, which the cities must now bear unassisted, despite their inability to prevent the entry or force the departure of undocumented aliens.

SUMMARY OF ARGUMENT

During the stay of implementation of the district courts' extensions of the legalization period, approximately 300,000 class members have given notice that they wish to apply for legalized status. If this Court reverses the decision of the Ninth Circuit, many deserving applicants will be relegated to undocumented status.

Reversal would be inconsistent with congressional intent, since IRCA and its legislative history plainly indicate an intent to facilitate application for legalized status by all eligible, long-term-resident, undocumented aliens. Class members are no less entitled to legalization

than those who have already been legalized, and reversal will not likely lead to their deportation.

Thrusting class members back into what is now the nether world of undocumented status would be particularly injurious to the cities, where such persons disproportionately reside. Conversely, the cities would derive important and deserved benefits from the legalization of all eligible undocumented aliens in their jurisdictions.

ARGUMENT

TO IMPLEMENT CONGRESSIONAL INTENT AND AVOID THE UNWARRANTED RESULT OF RELEGATING 300,000 APPLICANTS FOR LEGALIZATION TO UNDOCUMENTED STATUS, THIS COURT SHOULD AFFIRM THE DECISION OF THE COURT OF APPEALS.

This brief will not address the legality of the district courts' assumption of jurisdiction and affording the remedy of briefly extending the application period for injured class members, but will discuss the necessity and appropriateness of the remedy in view of the plain language of the statute and underlying congressional intent, the unwarranted result that would flow from denying class members the opportunity for legalization and the benefits that would likely accrue to class members and amici cities if their applications are processed.

A. Due to the Stay of the Remedy, the Claims of 300,000 Class Members Are Now At Issue.

Because the pendency of this appeal and the orders staying the implementation of the brief extensions of the application period have enabled 300,000 class member

applicants to come forward, the impact of this Court's decision will be extensive. Moreover, undocumented alien class members, who were prevented or deterred from making timely applications, could not reasonably be expected to have applied for legalization until after entry of the remedial orders extending the application period for them, which occurred only after May 4, 1988, the date of expiration of the application period set by the Attorney General.

In *Barr v. CSS*, in late 1986 plaintiffs challenged INS's ruling that, to establish eligibility, an applicant for legalization must show that INS's permission had been given for any travel outside the U.S. after November 6, 1986 (J.A. 1, J.A. 28). On April 22, 1988, eight business days before expiration of the legalization application period on May 4, the district court held that the challenged policy was invalid (*see* J.A. 48, 54-74). On June 10, 1988, the court issued an opinion requiring that, to remedy the wrong, INS must accept applications from class members until November 30, 1988 (Pet. App. 22a-28a).[2]

In *INS v. LULAC*, in July 1987 plaintiffs challenged another INS travel policy, under which an undocumented alien was deemed ineligible for legalization if he or she had traveled abroad and returned to the U.S. with facially valid papers. According to INS, subsequent U.S. residence could not, as required, be viewed as illegal (J.A. 212). On July 15, 1988, two months after the May 4, 1988 deadline, the court invalidated the challenged policy (J.A. 211-34). On August 12, 1988, the court

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[2] November 30, 1988 was adopted as a convenient date, because INS was already required to accept legalization applications for certain agricultural workers, another group of undocumented aliens addressed by IRCA, until that date.

ordered, as in *CSS*, that, to remedy the wrong, INS must accept applications from *LULAC* class members up until November 30, 1988 (Pet. App. 50a-60a).

The Government appealed, in part, the decisions of both district courts only on the issue of remedy, but did not challenge the invalidation of the travel policies (J.A. 2,6).[3] Pursuant to an order in *CSS* and a stipulation in *LULAC*, implementation of the remedy ordered by the district court was, and continues to be, stayed (Pet. App. 97a-98a, J.A. 9).

Having raised the issue of jurisdiction *sua sponte,* the Court of Appeals affirmed the district court decisions on February 13, 1992 (Pet. App. 1a-21a, 956 F.2d 914), and in May 1992, the Government filed its petition for a writ of certiorari. Due to the continuing stay of implementation of the remedial extensions, the time during which eligible applicants may file has unavoidably exceeded the extension plaintiffs initially sought as necessary to undo the impact of the invalidated travel policies.

Petitioners claim that allowing consideration by INS of class members' applications at this time would be contrary to congressional intent, because Congress intended the legalization program applicable to long-term residents to "conclude more than four years ago." Pet. Reply Br. 2. The fact that the relevant application period

[3] The Government also acquiesced in the application of the courts' rulings to plaintiffs who had filed timely applications, because these plaintiffs could achieve the same relief achieved in their district court actions through administrative challenges. See Pet. Brief 11 n.11. By availing itself of the convenience of the timely filers' federal actions to avoid processing their cases administratively, the Government undercuts its present position that the district courts lacked jurisdiction of respondents' claims and demonstrates the wasteful consequences of the Government's position here on jurisdiction.

concluded in May 1988 did not mean that Congress believed that the entire legalization program, including resolution of challenges to INS rulings, would have concluded in May 1988. In any event, Congress intended in the first instance that all eligible applicants be legalized, and, to that end, that each potential applicant receive accurate information about eligibility and a sufficient time period to apply. *See*, *supra,* 7-11. This is the goal advanced by the remedial orders of the district courts. Moreover, when Congress declined to lengthen the application period for all applicants, it was recognized that improprieties such as the issuance of the concededly invalid regulations stricken by the district courts would be remedied by the judiciary. *See* Pet. App. 55a-56a n.5.

B. IRCA's Provisions and Legislative History Indicate Clear Intent to Legalize the Greatest Possible Number of Eligible Long-Term-Resident, Undocumented Aliens.

IRCA's specified application procedures plainly indicate that the legalization program for long-term-resident, undocumented aliens was designed to reach the greatest possible number of eligible applicants.

Undocumented aliens resident in the U.S. since prior to 1982 who were otherwise eligible to apply for lawful temporary residence pursuant to the applicable provisions of IRCA ("the 245A program") were to have a 12-month period to file an application. 8 U.S.C. § 1255a(a)(1)(A).[4] Applications could be forwarded to

[4] Other requirements for eligibility in the 245A program are admissibility as an immigrant, no felony and less than three misdemeanor convictions, no record of civil rights violations and registration under the Selective Service Act. 8 U.S.C. § 1255a(a)(4).

the Attorney General by a "qualified designated entity." 8 U.S.C. § 1255a(c)(1)(B). These entities were to include "qualified voluntary organizations and other qualified State, local and community organizations." 8 U.S.C. § 1255a(c)(2). The Report of the House Judiciary Committee recognized that "due to distrust of authority and lack of understanding among the undocumented population," the use of voluntary agencies "might be able to encourage participation among undocumented aliens who fear coming forward. To assist in this endeavor, the bill authorizes the Attorney General to fund outreach services and provides for an extensive education and outreach program prior to the application period." H.R. Rep. No. 99-682(I) at 73. *See* 8 U.S.C. § 1255a(i).[5]

IRCA includes strict consent, confidentiality and use provisions, including a prohibition on the use of information relating to any applicant for any purpose other than making a "determination on the application." 8 U.S.C § 1255a(c)(3), (4) and (5). No numerical limitation on the number of eligible applicants from any area or *in toto* was imposed. 8 U.S.C. § 1255a(d)(1). *Compare* 8 U.S.C. § 1161(b)(1), 8 U.S.C. § 1160(a)(2)(c) (numerical limitation imposed on replacement agricultural workers allowed to apply for amnesty under IRCA). Finally, undocumented aliens who were prima facie eligible to apply for legalization under the 245A program were not to be deported before the beginning of and

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[5] In recommending extensive outreach efforts and the use of voluntary agencies to process applications, the Select Commission on Immigration and Refugee Policy ("Select Commission"), which conducted a 19-month study of the problem, stated that these measures would "encourage the maximum participation of qualified undocumented/illegal aliens in a legalization program." House and Sen. Comm. on the Judiciary, 97th Cong., 1st Sess., *U.S. Immigration Policy and the National Interest*, Final Report 81 (Mar. 1, 1981) ("*U.S. Immigration Policy*").

during the application period and were to be permitted to work. 8 U.S.C. § 1255a(e).

The manifest congressional purpose in establishing the carefully crafted 245A application procedure was to encourage as many applications as possible through (1) an extensive outreach program, (2) a lengthy application period, (3) the establishment of trustworthy intermediaries between INS and potential applicants, (4) the requirement of strict confidentiality, (5) the absence of any numerical limitation and (6) stays on deportation and interim work authorizations. *See Perales v. Thornburgh*, 967 F2d 798, 813 (2d Cir. 1992).[6]

The goal of attracting as many eligible applicants as possible through the 245A program is also plainly expressed in the legislative history of the statute. The Report of the House Judiciary Committee states:

> The United States has a large undocumented alien population living and working within its borders. Many of these people have been here for a number of years and have become a part of their communities. . . . However, because of their undocumented status, these people live in fear, afraid to seek help when their rights are violated, when they are victimized by criminals, employers or landlords or when they become ill.

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[6] In supporting the prohibition of deportation of, and granting of interim work authorization to, eligible applicants prior to and during the legalization program, a Protestant community representative stated that the provision sent "two important messages," one of which was "that the intent of this program is indeed to legalize all who are eligible." Immigration Control and Legalization Amendments: Hearings on H.R. 3080 Before the Subcomm. on Immigration, Refugees and International Law of the House Judiciary Comm., 99th Cong., 1st Sess. 94 (Statement of Dale De Haan, Director, Church of World Service).

> Continuing to ignore this situation is harmful to both the United States and the aliens themselves. . . . The Committee believes that the solution lies in legalizing the [status] of aliens who have been present in the United States for several years, recognizing that past failures to enforce the immigration laws have allowed them to enter and to settle here.
>
> . . . .
>
> The Committee strongly believes that a one-time legalization program is a necessary part of an effective enforcement program and that a generous program is an essential part of any immigration reform legislation.

H.R. Rep. No. 99-682 (I) at 49, *relied upon in McNary v. Haitian Refugee Center, Inc.*, 498 U.S. ___, 111 S. Ct. 888, 891 n.4 (1991) ("*McNary*"). *See also* H.R. Rep. No. 99-682(I) at 71.

Further describing the intended breadth and spirit of IRCA's legalization program, the Report reiterates:

> The Committee intends that the legalization program should be implemented *in a liberal and generous fashion* . . . . Such implementation is necessary to ensure true resolution of the problem and to ensure that the program will be a one-time-only program.

Id. at 72 (emphasis added).

IRCA's relevant statutory sections and legislative history indicate no congressional concern about unmanageable numbers of applicants in the 245A program or intent to reach only a portion of the eligible population.[7] Specifically, 8 U.S.C. § 1255a(f)(1), the interpretation of which is at issue here, which prohibits district court review of "a determination respecting an application for adjustment of status," reflects only an intent to channel review of individual denials of adjustment of status through agency and court of appeals proceedings rather than through the district courts. It was not designed to limit the number of successful 245A applicants. *McNary, supra.*

C. The Plaintiff Classes Deserve Legalization, and Reversal Will Not Result in Their Departure.

Class members are no less deserving of relief than those formerly undocumented aliens whose status has already been legalized in the 245A program.[8] At this stage, class members are more deserving of legalization, and will suffer a greater loss, if relegated to undocumented status. This is particularly so since employer sanctions may now be imposed under IRCA for the hiring of undocumented aliens. *See McNary,* 111 S. Ct. at 895.

As of enactment of IRCA on November 6, 1986, Congress provided that continuous residence in the U.S.

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[7] Granting relief to additional applicants would not "work a substantial expansion of the program ordered by Congress," Pet. 21 n.23, as the Government argues. The 245A program had no numerical limit and was designed to attract as many eligible applicants as possible.

[8] According to INS, more than three million people applied for legalization under IRCA, about 1.8 million under the 245A program and 1.3 million in the companion program applicable to certain agricultural workers. INS Report at 5. Also according to INS, "the overwhelming majority of the applicants were approved for temporary resident status," 94 percent in the 245A program at issue here, and 93 percent in the program for agricultural workers. *Id.*

for an approximately five-year period (since prior to January 1, 1982) entitled an undocumented alien to apply for legalized status in the 245A program. As of this filing, a class member will have to have been a continuous resident of the U.S. for over ten years to enable successful application. Congress considered long-term residence with consequent development of family and community ties as the critical factor in establishing the eligibility requirements for 245A legalization. With the passage of time during this litigation, class members have only become more qualified in that respect.

The INS Report shows that undocumented aliens have positive social characteristics. A higher proportion of already-legalized aliens were in the labor force than estimated for the general U.S. population (83 as opposed to 77 percent, respectively). INS Report at x. The unemployment rate for the legalized population is 3.5 percent as opposed to 5.5 percent for U.S. residents in general. *Id.* There is no reason to believe that the plaintiff class members do not share the same characteristics as the already-legalized group. The only factor that differentiates class members is that they were deterred by INS from having made a timely application due to the existence of INS's concededly invalid travel policies. That distinction does not indicate, and the Government has not argued, that the plaintiff class members are, as a consequence, any less suitable for legalization.[9]

If class members do not receive relief, they are likely to remain in the U.S. illegally, a result that will accomplish nothing in terms of congressional objectives underlying IRCA. Congress specifically recognized that the only alternatives to legalizing undocumented aliens through the 245A program, "intensifying interior enforcement or attempting mass deportation[,] would be both costly, ineffective, and inconsistent with our immigrant heritage." H.R. Rep. No. 90-682(I) at 49. Moreover, since the intent of IRCA was to redirect INS's enforcement efforts from the interior to the borders, there is no likelihood that class members will be deported. Since enforcement alternatives were rejected by Congress as infeasible and inhumane, and ignoring the long-term-resident, undocumented alien population was plainly deemed unacceptable by Congress's very enactment of IRCA, failing to allow application for legalization by class members would frustrate congressional intent in establishing the 245A program.

[9] While the Government has maintained that many class member applications are fraudulent, Pet. App. 62a, 66a-68a, that fact has not been established, since the applications have not been fully considered. In any event, the fact that, *arguendo*, some class member applications may be fraudulent does not mean that none should not be processed, as the Government maintains.

D. Legalization of Eligible Aliens Would Provide Critical Support to Class Members and Municipalities.

Since 84 percent of the population already legalized in the 245A program resides in large metropolitan areas, INS Report at 19, approximately 250,000 class members are urban residents. Affirmance would, therefore, bring substantial benefits to many urban areas in our nation and, at the same time, mitigate the devastating effects of undocumented status on aliens who are not legalized, yet will not likely abandon or be deprived of their residence in this country.

The benefits of legalization to undocumented aliens have been summarized by INS, with the "most important benefit given to successful applicants [for legalization being] documentation permitting them to work legally in the United States." INS Report at vii. As the Report

notes, undocumented "workers . . . formerly may have been handicapped in the labor market by their illegal status, or in some cases exploited because of it. . . ." *Id.* at 6. As INS aptly summarizes the effects of the program, "Legalization [has] brought [undocumented aliens] 'out of the shadows' and opened opportunities in the mainstream of American life." *Id.* at 7.

(i) Legalization Enables Long-Term-Resident Aliens to Participate in Critical Civic Functions.

Legalization of class members will improve the quality of life for all urban residents by enabling those aliens who have established family and community ties in the cities to contribute to and participate fully and freely in all civic processes. A vigorous citizenry, conscious of its responsibilities and rights, and ready to undertake and assert them, respectively, is critical to the civic health of our cities and our country. As the Select Commission concluded, "The existence of a fugitive underground class is unhealthy for society as a whole and may contribute to ethnic tensions." *U.S. Immigration Policy* 11.

Undocumented aliens are loath to report criminal acts to law enforcement authorities and to testify about criminal acts. *U.S. Immigration Policy* 72. Legalization eliminates one basis for their fear of assisting in maintaining law and order in financially beleaguered and crime-plagued metropolitan areas. Legalized status also assists in preventing undocumented aliens from being victimized by criminals who know that they fear contact with government. *See McNary,* 111 S. Ct. at 891.

Legalized status is the first step to citizenship, a prerequisite for voting and serving on juries. Enabling class members to progress toward citizenship was a result intended by Congress, and the benefits of class members'

full involvement in these fundamental civic functions need not be belabored.

Another benefit of legalized status is an increased willingness by wage earners to formalize employment records and to pay taxes. Legalization permits workers to move out of exploitative jobs, many of which are "off the books" and generate no tax revenue. Even for those undocumented aliens who have paid taxes, moreover, legalization permits the regularization of Social Security records, so as to assure proper allocation of credits. INS Report vii, 7.

(ii) Legalization Enables Long-Term-Resident Aliens to Assert Rights to Protection from Exploitation.

Enabling undocumented aliens to legalize their status will also enable them to assert their rights to be free from exploitation in the workplace, in the housing market and in the sale of consumer goods and services. *See* 132 Cong. Rec. H9709 (daily ed. Oct. 9, 1986) (statement of Rep. Rodino) ("undocumented persons must keep all contacts with governmental authorities to an absolute minimum").

Undocumented aliens are far more likely than members of the general U.S. population to be victimized by unfair labor practices. About ten percent of the legalized population reported being paid below the federal minimum wage when they applied for legalized status. INS Report at 40. The analogous figure for all U.S. workers is two percent. *Id.* Thirteen percent of employed legalized aliens reported to INS that they worked more than 40 hours per week, but were not paid time-and-a-half for those additional hours. *Id.*

By eliminating an opportunity for exploitation of a population fearful of asserting its rights, to the detriment

of all Americans in the job market, *see* Alien Adjustment and Employment Act of 1977: Hearings on S. 2252 Before the Senate Judiciary Comm., 95th Cong., 2d Sess. 202, 203 (statement of Ray F. Marshall, Secretary of Labor), legalization would benefit all workers. As the House Judiciary Committee noted in supporting the passage of IRCA, the following testimony was received from the NAACP:

> Our branches across the country, particularly in large cities, report that the undocumented worker impacts the employment of blacks. Many blacks are forced from employment rolls by the undocumented worker who is hired at a subminimum wage and is at the mercy of the employer. The worker is consciously aware that he/she has no protection because of illegal status and will accept "starvation" wages to be employed in the United States.

H.R. Rep. No. 99-682 (I) at 47. The nation's job markets should not be degraded by illegal practices that limit job opportunities to persons unable to demand legal treatment. *See U.S. Immigration Policy* 41-42 ("most serious is the fact that illegality [in employment practices] breeds illegality"); State of California, Office of the Auditor General, *A Fiscal Impact Analysis of Undocumented Immigrants Residing in San Diego County* ii (August 1992) ("*Fiscal Impact Analysis*") ("undocumented immigrants displace local workers and depress overall community wage levels and consequent economic activity").

Similar potential for illegal treatment of undocumented aliens abounds in the areas of housing and consumer affairs. Crowded, dangerous and illegal housing is often the lot of undocumented aliens. In consumer transactions, undocumented aliens would be reluctant to

complain about shoddy merchandise or unfair financial practices. As in the case of labor violations, the existence of these exploitative activities pollutes community life.

(c) Legalization of Long-Term-Resident, Undocumented Aliens Would Enable Federal Reimbursement for Certain Local Expenditures, Encourage the Use of Cost-Effective Preventive Care and Permit a More Accurate Census.

Legalization of undocumented aliens renders them eligible for a number of federal assistance programs for which they are currently ineligible, including Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and Food Stamps, all of which require recipients to be citizens or have resident status. H.R. Rep. No. 99-682(I) at 19.[10]

Localities must now unfairly absorb the entire cost of providing humanitarian aid to undocumented aliens, who are often persons of limited economic means, *see* INS Report at 35. Such aid includes general emergency aid, such as food, clothing and shelter, and emergency medical or remedial educational assistance. An analysis by the Auditor General of California concerning the overall cost imposed by undocumented alien residents of San Diego County concluded that costs for social services exceeded tax and other revenues related to undocumented aliens by $146,000,000 annually; the annual net cost for services provided to undocumented aliens by the

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[10] This brief will not discuss whether a statutory waiting period would apply to class members, the exceptions to the waiting period, or the State Legalization Impact Assistance Grant program ("SLIAG"), which was designed to assist states with some of the costs for aliens legalized pursuant to IRCA. Additional appropriation would be needed to fund SLIAG, and it is not certain when assistance programs would apply to class members. *See also H.R. Rep. No. 99-682 (III)* at 28-29.

State of California was estimated at approximately $3 billion. *Fiscal Impact Analysis* xii.

Congress recognized that legalization of undocumented aliens would provide deserved financial relief to localities. Addressing a 1983 study by the New York City Health and Hospitals Corporation ("HHC"), which operates the nation's largest public hospital system, the House Judiciary Committee noted:

> The study found that HHC hospitals treat roughly 7000 undocumented aliens as short-stay (under 90 days) patients each year, over 80 percent of whom are admitted through the emergency rooms. Half of these patients (51%) are pregnant women, most of whom have not received adequate prenatal care and have come to the hospital to give birth or resolve a complication of pregnancy. The study estimated that the HHC hospitals lose about $18 million each year in Medicaid revenues solely because of the immigration status of its short-stay alien patients. Obviously, these are funds that must be made up by local taxpayers.

H.R. Rep. No. 99-682 (IV) at 13. *See also St. Joseph's Hospital and Medical Center v. Maricopa County,* 142 Ariz. 94, 688 P.2d 986 (1984) (county may not deny reimbursement to hospital for emergency care for undocumented aliens).

By eliminating fear of contact with public officials, including health care workers, legalization would also encourage the use of preventive services, so as to avoid the need for the use of more expensive emergency care. *See* H.R. Rep. No. 99-682 (IV), at 7; Immigration Control and Legalization Amendments: Hearings Before the Subcomm. on Immigration, Refugees, and International

Law of the House Judiciary Comm., 99th Cong., 2d. Sess. 249 (1986).

Finally, legalization would help to assure that now-undocumented aliens are counted in the census, and that localities receive a fair allocation of federal aid based upon population. Among the programs in which aid is distributed based upon the census are Mental Health Services for the Homeless Block Grants, Community Development Block Grants, Developmental Disability Grants, Nutrition Programs for the Aging, Adult Education-State Administered Grants and Migrant Education. Executive Office of the President, Office of Management, and Budget: *Catalog of Federal Domestic Assistance* 224, 343, 347, 530, 1015, 1021 (1990).

* * *

Affirmance would further congressional purposes in enacting IRCA and deliver deserved benefits to class members and cities where they largely reside. Reversal would serve no broad national interest, since class members will revert to an even more degraded undocumented status and will not be likely either to depart or be deported.

Due to INS's ungenerous actions (1) in adopting the invalid regulations challenged by plaintiffs and (2), after conceding the invalidity of and harm to class members caused by those regulations, in challenging only the brief extensions of the application period, 300,000 applications for legalization by persons that were improperly prevented or deterred from timely filing by INS are now pending. It would be a regrettable, draconian rebuff to the long effort to achieve immigration reform, *see* H.R. Rep. No. 99-682 (I) at 51-56, which produced what was

intended to be a generous, but one-time-only, legalization program, to reverse the decision on review and approve INS's summary rejection of class members' applications, relegating to undocumented status legions of long-term-resident aliens who should have been legalized long ago.

CONCLUSION

THE ORDER BELOW SHOULD BE AFFIRMED.

Respectfully submitted,

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